

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

TNT ROAD COMPANY, et al.,)	
)	
Plaintiffs,)	
)	
v.)	
)	Civil No. 03-37-B-K
STERLING TRUCK CORPORATION,)	
)	
Defendant.)	
_____)	
)	
STERLING TRUCK CORPORATION,)	
)	
Third-Party Plaintiff,)	
)	
v.)	
)	
LEAR CORPORATION,)	
)	
Third-Party Defendant.)	

MEMORANDUM OF DECISION¹

On April 22, 2000, a fire spontaneously erupted in and destroyed a Sterling truck owned by TNT Road Company and manufactured by Sterling Truck Corporation. In addition to destroying the truck (with the exception of some salvageable parts), the fire caused property damage to a building in which the truck was parked and in which various items were stored. TNT and its insurers are now each pursuing these claims against Sterling Truck. Because the plaintiffs' expert contends that the fire started as a result of a defective ignition switch, Sterling Truck filed a third-party action against the switch manufacturer, Lear Corporation, seeking contribution or indemnification in the event that TNT's first-party action should succeed.

¹ Pursuant to 28 U.S.C. § 636(c), the parties have consented to have United States Magistrate Judge Margaret J. Kravchuk conduct all proceedings in this case, including trial, and to order entry of judgment.

Currently pending before the Court are the parties' cross-motions for summary judgment, all of which I now deny.

Facts

One day prior to the fire, an employee of TNT Road Company power washed the truck's exterior and its engine in the company's wash bay. Early the next morning, at approximately 6:30 a.m., another employee came to the premises and discovered the fire. On the day of the fire, the Sterling truck was approximately one year old with approximately 100,000 miles.² The fire not only substantially destroyed the truck, but also caused significant damage to the wash bay and its contents. Acadia Insurance Company insured the building and some of its contents. National Casualty Company insured the vehicle. The subsequent investigation of the fire was conducted at the behest of the insurance companies. The investigators working on their behalf concluded that the fire was likely caused by an electrical malfunction because of the length of time between when the truck was parked and when the fire was discovered. Based on a subsequent investigation of the wreckage, the plaintiffs' retained expert, James Adams, opines that the fire started in or at the truck's ignition switch.

Adams inspected the wreckage about one month after the fire. Adams would testify at trial, and a jury might reasonably conclude, that his investigation substantially complied with National Fire Protection Association consent standards governing fire investigations. After interviewing the owners of the truck, Adams began his investigation at a distance from the truck, working from the areas showing the least amount of fire damage, into the areas where there was more intense burning or heat. Throughout his investigation, he took numerous photographs of

² According to Sterling Truck, it is not uncommon for a truck of this kind to drive as many as 1 million miles over its life, if well maintained.

the wreckage, the building and various truck components. Based on his examination Adams was able to rule out the following components of the truck as possible causes of the fire:

- a. He inspected the fuel tanks and found them to be full after the fire, which rules out the fuel tanks as the cause or origin.
- b. He inspected the battery. It still had residual power after the fire, which would provide a source of electrical current to the ignition switch at the time of the fire.
- c. He eliminated the alternator because there was evidence of greater heat in the area of the ignition switch than in the area of the alternator. Except in the very localized area of the switch, all of the wires were burned fairly evenly.
- d. He inspected the starter, and concluded it was not the origin of the fire because the truck was not heavily burned below the frame level, and the starter itself was not excessively burned. In addition, if the starter had malfunctioned, it most likely would have just run the battery down.
- e. He traced the battery cables and found no damage that would have caused the fire.
- f. He inspected the power distribution center and saw even burning that would indicate it was burned as a result of the fire, and not as a cause of the fire.
- g. He eliminated the engine block heater and the fuel heater as possible sources of the fire, because it is highly unlikely that these would be used inside a heated garage.
- h. He inspected the chassis wiring harness, but it was mostly destroyed in the fire. Based on what he could observe, he eliminated it as a cause of the fire because it was burned evenly. If the fire had started within a particular wire, he would expect to see heavier beading and arcing in one location, and he did not observe that.
- i. He eliminated arson as a cause of the fire based on his discussions with the owners of TNT Road Company, based on the fact that it was a solid, substantial business, and because the owners immediately began looking for another truck to replace the one that burned.
- j. He obtained and reviewed the maintenance records for the truck, which show no evidence that the windshield was cracked or replaced.

Such evidence might otherwise have suggested that water and moisture were introduced into the truck's instrument panel.

After evaluating and photographing the wreckage as a whole, Adams focused in on the area of maximum damage, the cab of the truck. He approached this area of the truck and began to delayer the debris. When Adams uncovered the truck's ignition switch, he immediately began to suspect it as the cause of the fire. According to Adams, his suspicions were founded on the following observations:

- a. The switch had separated. The black plastic portion of the switch, which contains the electrical contact area of the switch, had separated from the zinc body. The zinc body was embedded in the debris about three inches from the black plastic housing of the switch.
- b. The switch was charred, but only in a particular part of the switch. He also observed "beading" on the contacts of the switch.
- c. The truck showed generally even burning and heating throughout, except on this switch. The switch showed excessive heating in one particular area, where the plastic portion of the switch was charred and cracked. The localized charring was the result of electrical activity, and not the result of a fire that started somewhere else.
- d. The ignition switch had been subjected to enough heat to melt the zinc portion of the switch; however, less than two inches away, there was a headlight switch, of fairly similar design, which was not affected at all. If the ignition switch was subjected to excessive, localized heat that did not affect components less than two inches away, then the heat must have originated in the switch.
- e. A spring within the ignition switch had been subjected to excessive heat which caused it to deform and collapse. This heat must have been applied to the switch while it was still intact (before the zinc and plastic parts separated), because otherwise the spring would not have collapsed. This indicates that the excessive heat originated within the switch.

Mr. Adams then took extensive photographs of the switch to document his observations.

Because he had located what he suspected may be the cause of the fire, he suspended his investigation until other interested persons could have the opportunity to inspect the truck.

It has been contended that Adams's investigation was deficient because he failed to consider the possibility that aftermarket component installations and related electrical work caused the fire (TNT had installed in the truck a CB radio, stereo, cell phone, and back up lights). Adams would testify that these aftermarket alterations could not have caused the fire because none of their circuitry would have been energized while the truck's ignition switch was in the off position. TNT's mechanics testified that these accessories were connected to factory-installed power points, which are not energized when the switch is in the "off" position. Adams confirmed through his inspection of the switch that it was in the "off" position at the time of the fire.

Faced with a burned out wreckage, Adams has been forced to resort to electrical theory to explain how the switch could have caused the fire. Adams opines that the fire likely started because the "Bakelight" (the plastic casing) surrounding the switch was cracked or not well sealed, permitting dirt or moisture to enter the switch and generate a short circuit. Due to the damage to the switch, there is no way to prove that the Bakelight was cracked or loose or whether any defect arose during manufacture by Lear or installation by Sterling. There also is no way to prove that dirt or moisture were introduced into the switch because it came apart and, for lack of a better term, cooked in the fire. Lear's expert will testify that it would be impossible for a switch to crack or fail to seal during the manufacturing process and that, even if it did, Lear's quality control inspections would have been 100 percent effective in finding and removing such a switch. Lear's expert will also testify that Adams's theory that the introduction of dirt or moisture could lead to a fire is impossible and that Adams does not understand the rudiments of electricity or a vehicular electrical system. Adams will testify that it is Lear's expert who does

not understand. In a related order I have denied Lear's motion to exclude Adams's testimony pursuant to Rule 702 of the Federal Rules of Evidence.

Discussion

According to the plaintiffs, judgment should enter on their claims against Sterling because Sterling relies on Adams in support of its third-party claims and has not designated an opposing expert, because of the way in which Sterling handled a certain interrogatory answer and because of Sterling's attempt to avoid taking a position on the cause of the fire, all of which, in the plaintiffs' view, add up to an admission that the truck contained a defect. (Docket No. 52.) Sterling contends that it should obtain judgment because, even if the plaintiffs prove a manufacturing defect, Lear must be 100 percent responsible as the manufacturer of the switch. (Docket No. 55.) Lear maintains that it should obtain judgment against Sterling's third-party claims because Adams's testimony is insufficient to prove a defect in the design or manufacture of the subject ignition switch. (Docket No. 50.) I address these arguments in turn.

A movant is entitled to summary judgment only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A fact is material if its resolution would "affect the outcome of the suit under the governing law," Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986), and the dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party," id. I view the record in the light most favorable to the non-movants and I indulge all reasonable inferences in their favor. See Feliciano de la Cruz v. El Conquistador Resort & Country Club, 218 F.3d 1, 5 (1st Cir. 2000).

A. Plaintiffs' Motion for Summary Judgment (Docket No. 52)

The plaintiffs' motion relies on what I would describe as Sterling's casual approach to discovery. In particular, there is Sterling's response to the plaintiffs' interrogatory number 13:

Interrogatory No. 13: Identify all facts which support the allegation in your Third Party Complaint that a defect in the ignition switch supplied to you by Lear was the proximate cause of the [fire].

Answer: . . . Sterling answers that the part of the ignition switch containing stationary contacts shows that the body of the switch was charred and burned electrically and not burned as a result of the fire. The fire therefore was the result of a failure within the ignition switch. . . .

(Docket No. 54, Ex. 2.) According to the plaintiffs, this answer amounts to an admission that Sterling's truck contained a defect. According to Sterling, this answer simply indicates facts that a jury might find in support of Sterling's third-party claims. On balance, I am not inclined to treat this interrogatory answer as an admission because of the way the interrogatory is worded, asking Sterling to identify facts that might support an allegation. Moreover, Sterling referred to a "failure within the ignition switch," not necessarily a defect in its manufacture. Still, the way that Sterling chose to word its answer is striking, particularly the unqualified statement that the fire "therefore was the result of a failure within the ignition switch," which states not a fact, but a conclusion. Other aspects of the discovery record reflect that Sterling's counsel considered that the plaintiffs ought to simply accept that Sterling did not have a position on the cause and origin of the fire based on his (i.e., counsel's) say so. Counsel, of course, is not a witness and cannot insulate his client from appropriate discovery requests. In any event, the testimony of Sterling's 30(b)(6) deponent supplies a whiff of this position. When asked whether it is Sterling's position "that something other than the ignition switch was the cause of this fire," he responded that that

was his understanding. (Deposition of Bruce Koepke , Docket No. 39, at 95.³) Although not exactly crystalline, I infer from this testimony that Sterling has not conceded that its product was defective. Of course, a party in the position of Sterling has a right to put the plaintiff to its proof, without affirmatively contesting the plaintiff's expert, and I am not aware of any case that precludes a third-party claimant from relying on the evidence adduced by the plaintiff's expert to establish its third-party claims.

B. Sterling's Motion for Summary Judgment (Docket No. 55)

According to Sterling, it is entitled to judgment as a matter of law because it cannot be "responsible in damages" to the plaintiffs even if the plaintiffs prove a defect in the switch. This argument assumes that a finding that a defect existed in the switch requires an allocation of 100 percent liability to Lear on Sterling's third-party action. However, if the plaintiffs convince a jury that the fire was caused by a defective component in Sterling's truck, Sterling will be legally liable in damages to the plaintiffs as the seller of a defective product. See 14 M.R.S.A. § 221. The elements of Sterling's third-party claim for indemnification or contribution are not necessarily identical to the elements of the plaintiffs' product claims. As is discussed below, the law permits a products liability plaintiff to obtain judgment in some circumstances even though a specific defect cannot be proved. Thus, it may not matter for the plaintiffs' claims whether they can prove a switch manufacturing defect by Lear (making a defective switch) or a truck manufacturing defect by Sterling (installing a defective switch or breaking a non-defective switch during installation). However, it may well matter for purposes of Sterling's indemnification/contribution claim whether the evidence permits the factfinder to meaningfully allocate responsibility between Sterling and Lear based upon relative degrees of culpability. See,

³ I make this finding despite counsel's objection that his client did not designate Mr. Koepke "to testify on behalf of Sterling with regard to anyone's conclusions about the cause of the fire." (Docket No. 67, ¶ 20 Response.)

e.g., Donald N. Zillman et al., Maine Tort Law § 16.12 (1994) (discussing Law Court precedent concerning implied, or equitable, indemnity). Because that issue was not briefed in the parties' papers, I reserve judgment on that question. Sterling's motion also fails for an even more remedial reason: it completely ignores the parties' pleadings. The plaintiffs have not filed a direct claim against Lear.

C. Lear's Motion for Summary Judgment (Docket No. 50)

Lear's motion for summary judgment relies, in part, on ancillary motions that I have denied.⁴ The balance of Lear's motion goes to the crux of this case: can the plaintiffs prove up a products liability case when their expert can point to circumstantial evidence that Lear's switch was the cause and origin of the fire, but cannot point to evidence of a specific defect in the switch or the origin of the defect? My conclusion is that the law permits a products liability suit to go forward under the circumstances of this case.⁵

Maine's strict liability statute provides as follows:

One who sells any goods or products in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to a person whom the manufacturer, seller or supplier might reasonably have expected to use, consume or be affected by the goods, or to his property, if the seller is engaged in the business of selling such a product and it is expected to and does reach the user or consumer without significant change in the condition in which it is sold. This section applies although the seller has exercised all possible care in the preparation and sale of his product and the user or consumer has not bought the product from or entered into any contractual relation with the seller.

14 M.R.S.A. § 221 ("Defective or unreasonably dangerous goods"). The statute was drawn, almost verbatim, from the Restatement (Second) of Torts § 402A (1965). See Bernier v.

⁴ The ancillary motions are Lear's motion for sanctions based on the contention that Sterling destroyed evidence (Docket No. 48) and Lear's motion to preclude expert testimony by James Adams (Docket No. 49).

⁵ I do not analyze each of the plaintiffs' underlying causes of action separately because Lear has not undertaken to do so. According to Lear, "the analysis is the same in all of the theories put forward by the Plaintiffs and the Third-Party Plaintiff in this case." (Docket No. 50 at 9.)

Raymark Indus., Inc., 516 A.2d 534, 537-38 (1986) ("The Legislature formulated section 221 directly from section 402A of the Restatement (Second) of Torts (1965)). In the context of actions premised on the statute, the Law Court has observed that "[s]trict product liability in tort developed as a theory to allow plaintiffs injured by defects in manufactured products to avoid the bars to recovery present in other tort actions." Id. at 270. When interpreting § 221, the Law Court customarily looks to the Restatement, including its commentary. See, e.g., Bernier, 516 A.2d at 537-38 ("The Legislature formulated section 221 directly from section 402A of the *Restatement (Second) of Torts* (1965). . . . Since section 221 and its legislative history does not have anything to say . . . the commentary to section 402A is an appropriate place to begin our analysis."); Austin v. Raybestos-Manhattan, Inc., 471 A.2d 280, 287 (Me. 1984) ("We recognize that the legislative history of our strict liability law adds force to the usual respect any court should accord . . . the scholarly work product of the American Law Institute."). See also Adams v. Buffalo Forge Co., 443 A.2d 932, 934 (Me. 1982) (following the Institute's approach in a products liability context). The American Law Institute says the following with respect to the use of circumstantial evidence to prove a product defect:

It may be inferred that the harm sustained by the plaintiff was caused by a product defect existing at the time of sale or distribution, without proof of a specific defect, when the incident that harmed the plaintiff:

(a) was of a kind that ordinarily occurs as a result of product defect; and

(b) was not, in the particular case, solely the result of causes other than product defect existing at the time of sale or distribution.

Restatement (Third) of Products Liability § 3 (1998). As the plaintiffs point out, a motor vehicle does not spontaneously combust in the middle of the night in the absence of a product defect, when there is absolutely no evidence to support a contention that anything extraneous to the truck caused the fire. Moreover, Adams's expert opinion does not simply rely on the occurrence

of a fire. Through his investigation Adams was able to identify circumstantial evidence of an electrical malfunction in a particular component by means of a reliable investigatory methodology (delaying) and his skill and expertise in working with electrical systems. That he must theorize about the defect (cracked Bakelite) or how it was introduced (during manufacture of the switch or during manufacture of the truck) does not require an entry of summary judgment where Adams is able to analytically trace the fire to a specific switch in the truck that, absent a defect, should not have spontaneously shorted out and caused a fire. Although it may simply be a matter of characterization, Adams has pointed to evidence of a specific component malfunction within Sterling's truck and a product defect: the switch was manufactured or installed in such a way as to be capable of spontaneously combusting in the absence of abnormal use or conditions.

According to the American Law Institute:

The most frequent application of this Section is to cases involving manufacturing defects. When a product unit contains such a defect, and the defect affects product performance so as to cause a harmful incident, in most instances it will cause the product to malfunction in such a way that the inference of product defect is clear. From this perspective, manufacturing defects cause products to fail to perform their manifestly intended functions. Frequently, the plaintiff is able to establish specifically the nature and identity of the defect and may proceed directly under § 2(a). But when the product unit involved in the harm-causing incident is lost or destroyed in the accident, direct evidence of specific defect may not be available. Under that circumstance, this Section may offer the plaintiff the only fair opportunity to recover.

Id. cmt. b. The comment reflects that § 3 is plainly geared toward the circumstances of this case. Without belaboring the discussion, illustrations 3 and 5 bolster this conclusion. Moreover, according to the Institute, "A huge body of case law supports this proposition." Id. (collecting cases). This is not a situation in which a strong line of authority differs with the Institute's assessment of the rule. In the absence of a significant undercurrent of divergent authority, I am doubly inclined to conclude that the Law Court would adopt the Institute's statement of the rule.

In opposition to the rule, Lear cites Walker v. General Elec. Co., 968 F.2d 116 (1st Cir. 1992), for the proposition that the First Circuit Court of Appeals has already held that Maine would not follow the trend identified in the Restatement. However, Walker is easily distinguishable. In Walker, the plaintiff's own expert conceded that the plaintiff's toaster may have malfunctioned simply because it wore out after six-to-eight years of daily use. Id. at 120. Because the plaintiff's expert conceded that normal wear and tear was an equally likely explanation for the toaster's malfunction, the Court held that it was not error for the District Court to direct a verdict for the defendant. Id. This case is different. The plaintiffs here have an expert who has used a reliable investigatory methodology to rule out numerous other possible causes of the fire and to root out a specific component malfunction that would not happen in the absence of a manufacturing defect. The expert's conclusions can be submitted to a jury for its consideration.

Conclusion

For the reasons stated above, the parties' motions for summary judgment (Docket Nos. 50, 52 and 55) are all **DENIED**. A genuine issue of material fact exists whether the truck fire was caused by a manufacturing defect.

So Ordered.

Dated July 19, 2004

/s/Margaret J. Kravchuk
U.S. Magistrate Judge

TNT ROAD COMPANY et al v. STERLING TRUCK
CORPORATION

Assigned to: MAG. JUDGE MARGARET J.

KRAVCHUK

Referred to:

Demand: \$

Lead Docket: None

Related Cases: None

Case in other court: None

Cause: 28:1332 Diversity-Property Damage

Date Filed: 03/17/03

Jury Demand: Both

Nature of Suit: 385 Prop. Damage

Prod. Liability

Jurisdiction: Diversity

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